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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re J.T., a Person Coming Under the
Juvenile Court Law.

SAN BERNARDINO COUNTY
CHILDREN AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

J.L.,

Defendant and Appellant.

E065377

(Super.Ct.No. J256337)

OPINION

APPEAL from the Superior Court of San Bernardino County. Annemarie G.
Pace, Judge. Affirmed.

Daniel G. Rooney, under appointment by the Court of Appeal, for Defendant and
Respondent.

Jean-Rene Basle, County Counsel, Adam Ebright, Deputy County Counsel, for
Plaintiff and Respondent.

J.L. (mother) is the biological mother of J.T. (minor), the subject of this dependency proceeding. Mother appeals from the juvenile court's order suspending visitation. For the reasons set forth below, we shall affirm the juvenile court's order.

FACTUAL AND PROCEDURAL HISTORY

Minor came to the attention of San Bernardino County Children and Family Services (CFS) after sheriff's deputies investigated a physical abuse allegation, discovered that minor (two years old at the time) had significant bruising on his bottom, back, legs and head. Minor's babysitter had noticed the bruises and asked mother about them. Mother stated that her boyfriend had been watching minor. When she arrived home, the boyfriend was drunk and yelled that mother was "raising a pussy" and did not discipline minor properly. The babysitter reported that minor did not sleep well the next night, was requesting an unusually large volume of water, and appeared to be sore from an unknown number of injuries. Mother did not seek medical treatment and said she was afraid to confront her boyfriend about the incident; she was afraid he would kick her out if she did. Mother and the boyfriend were interviewed by deputies and arrested on child abuse/endangerment charges. Minor was hospitalized at Loma Linda Medical Center.

The social worker prepared a Welfare and Institutions Code¹ section 300 petition on minor's behalf alleging serious physical harm under section 300, subdivision (a); failure to protect under section 300, subdivision (b); and severe physical abuse under section 300, subdivision (e). At the detention hearing, the court found that a prima facie

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

case had been established that minor came under section 300, ordered detention out of the home, and set visitation for once a week.

The jurisdictional/dispositional report recommended that the amended section 300 allegations be found true and that reunification services be provided for mother. On September 17, 2014, the social worker met with mother to discuss the circumstances of minor's injuries. Mother presented as demanding and hostile. She threatened to sue CFS and the social worker had difficulty keeping mother focused on the topics at hand. Mother reported that she was aware her boyfriend had a drinking problem, and that he had caused the bruising on minor's body. However, she explained that the boyfriend had apologized for his actions the next day. Mother confirmed she did not contact law enforcement because she was afraid that once they saw all the beer cans and poor living conditions, they would take minor away. Mother minimized the injuries to minor stating she had only seen the bruising on minor's bottom and speculated that the other bruising might have occurred from playing with other children. Mother claimed she did not know her boyfriend's alcohol problem was that bad, and explained he was actually a good father when he was not drunk. Mother characterized the criminal charges against her boyfriend as "bogus." Mother did not seem to have insight into the fact that the boyfriend physically abused minor.

Mother had a long history of homelessness and had lost custody of her older child due to her unstable lifestyle. She reported that she was diagnosed as bipolar and suffered from emotional and behavioral problems. The social worker concluded it was unsafe for

minor to stay in mother's care and recommended counseling, parenting classes, and significant lifestyle changes to help ensure minor's safety.

In the interim, minor had a physical examination; the exam revealed evidence of physical abuse with blunt force trauma, malnourishment, and medical neglect. Minor was in the fifth percentile in height and weight for his age and displayed signs of developmental delay. Minor was initially placed with a nonrelative extended family member, but the placement was unstable and he was soon removed and placed in a foster home.

At the October 29, 2014, jurisdictional/dispositional hearing, mother signed a waiver on the amended allegations and the court found that minor came under section 300, subdivisions (a), (b), and (g). The court approved the reunification plan and ordered weekly visitation.

The social worker prepared an addendum report recommending continued reunification services and additional components of the case plan to address mother's anger issues and domestic violence history. Mother was generally cooperative with the social worker, but was consistently rude and offensive toward the foster mother and visitation coach. The social worker's main concerns were mother's history of participating in abusive relationships and her mental illness. The social worker recommended continued counseling, anger management, a proper psychological evaluation, and the fostering of a safe support system to help provide boundaries for mother and minor.

At the December 29, 2014, appearance review hearing, the juvenile court adopted the amendments to the case plan, ordered a psychological evaluation for mother, and authorized unsupervised visits.

On January 22, 2015, minor's trial counsel filed a section 388 petition asserting that visitation with mother was detrimental and requesting that all visitation be suspended. Recently, minor had been diagnosed with chronic, active, ongoing Post Traumatic Stress Disorder (PTSD) and minor's doctor recommended that visitation stop until he could stabilize. Minor exhibited fear and anxiety beyond the norm for a child his age, which was especially evident after visitation with mother. The doctor recommended that visits be withheld so that minor's condition could stabilize enough to begin treatment.

The social worker filed a report in response to the section 388 petition indicating that CFS did not agree with the recommendation to suspend visitation at that time. The mother and child had not been evaluated together, but a SART appointment was pending, and the social worker had not observed any negative interaction during visitation.

In the weeks following minor's diagnosis, the foster parents reported that his behavior began to improve and that he had become calmer overall. The social worker reported that, although minor quickly became distressed during visits and would sometimes throw temper tantrums, he generally appeared comfortable interacting with mother. The social worker concluded that mother was making good progress in her case plan and recommended that visitation continue as previously ordered. In light of the social worker's reports, minor's counsel asked to withdraw the section 388 petition. For

procedural purposes, however, the court denied the petition instead of ordering it withdrawn.

The social worker prepared a six-month review report dated April 27, 2015, recommending that reunification services continue for mother. Visitation had continued to improve and minor continued to have fewer temper tantrums. Minor was eating more consistently and had begun to gain weight. At the review hearing, the court adopted the social worker's amended findings and ordered additional reunification services for mother.

Over the next six months, however, mother began to make poor lifestyle choices and minor began to have difficulties after visits again. Mother had become involved in another abusive relationship. On June 22, 2015, her new boyfriend physically abused her. Later, she had allowed a homeless family to move into her apartment after meeting them on the street. Mother also began verbal altercations during visitation with minor. During one visit, she cornered minor against a wall in an attempt to force him to hug her. When the foster father asked mother to stop, she began yelling at him and continued yelling as she followed him outside. During another visit, mother became verbally abusive to the social worker and argued that PTSD was a "made up" syndrome. Near the end of May 2015, the foster parents noticed that minor was having serious behavioral difficulties for several days after visiting with mother. Minor had prolonged tantrums, sleeplessness and difficulty eating.

The social worker found that, despite the services offered, mother continued to exhibit poor judgment and periods of explosive anger. The social worker concluded that

the conditions that brought minor to the attention of CFS still existed. The social worker recommended termination of services with adoption as the permanent placement plan and monthly visitation for two hours.

On October 16, 2015, mother was arrested for assault with a deadly weapon and three other charges associated with a prior felony conviction. CFS also received mother's neuropsychological assessment, which concluded that her exposure to unsafe people and cognitive limitations "create significant potential safety risk in her caring for her son on her own" and that the lack of awareness of her limitations made it likely that she would engage in the same dangerous activities again.

At the 12-month review hearing, the court found that mother had failed to make substantive progress in her treatment plan, terminated reunification services, and set a section 366.26 hearing to select a permanent placement plan. The court ordered supervised visitation once a month for two hours.

The social worker prepared an approval packet dated January 21, 2016, indicating that visitation had become detrimental to minor, and recommended that the court suspend visitation for the time being. Due to mother's incarceration, mother had not visited minor between September and December 2015. During this time, minor's behavior began to improve; he was sleeping and eating consistently, and was able to control his hitting and biting behavior. However, after minor saw mother on December 29, 2015, his behavior declined significantly. After visiting with mother, the foster parents reported that minor refused to eat or sleep and began to engage in hitting and spitting behaviors. After evaluating minor, his doctor found that visitation with mother was the direct cause for

minor's poor behavior, and concluded that it was "imperative that visitation with [mother] be stopped immediately."

On February 2, 2016, the court signed the approval packet and adopted its content without amendment. Mother's trial counsel requested an evidentiary hearing to allow mother to testify about the visits. The court explained that because a section 366.26 hearing had already been set, the case was beyond the point of considering reunification. CFS's counsel argued that case history presented enough information for the court to find that visitation would be detrimental to both minor's emotional and physical health based on his reaction to the visits. The court denied the request for an evidentiary hearing and ordered visitation suspended, but authorized the social worker to resume visitation when appropriate.

DISCUSSION

A. THE JUVENILE COURT PROPERLY SUSPENDED VISITATION

Mother contends that the court erred in suspending visitation without a finding that the visits were detrimental to minor.

Placement and visitation orders are the prerogative of the juvenile court, which must always consider the best interest of the child when making such orders. (*In re John W.* (1996) 41 Cal.App.4th 961, 973-974.) The court has broad discretion in fashioning visitation orders and its determination will not be disturbed on review absent a clear abuse of discretion. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067.) Under the abuse of discretion standard of review, an appellate court will not disturb an order unless

the lower court made an “arbitrary, capricious, or patently absurd determination.” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.)

Generally, it is improper to deny visitation in the absence of a showing of detriment to the child. (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580.) However, no visitation order shall jeopardize the safety of the child. (§ 362.1, subd. (a)(1)(B).) A “parent’s liberty interest in the care, custody and companionship of children cannot be maintained at the expense of their well-being. [Citation.] While visitation is a key element of reunification, the court must focus on the best interests of the children ‘and on the elimination of conditions which led to the juvenile court’s finding that the child has suffered, or is at risk of suffering, harm specified in section 300.’ This includes the ‘possibility of adverse psychological consequences of an unwanted visit between mother and child.’” (*In re Julie M.* (1999) 69 Cal.App.4th 41, 50.) Moreover, once reunification services have been terminated, the parent’s interest in the care and custody of the child is no longer paramount, and the juvenile court’s focus shifts to the child’s best interests. (*In re Stephanie M., supra*, 7 Cal.4th at p. 317.)

Here, in the approval packet filed with the court, an evaluation from the psychology team treating minor was included. The team consisted of Brandy Lea Sewell (MS, Psychology Intern), Traci Williams (MD, SART Pediatrician), and Kiti Freier Randall (PhD, Pediatric Neurodevelopmental Psychologist). In the report, the psychology team noted that minor had been receiving services from SART since December of 2014; the report was written on January 12, 2016. After discussing minor’s lack of progress, the team stated, “it is essential to highlight that visitation with [mother]

is a direct cause of meal refusals, sleep and results in severe dysregulation. *Given [minor's] severe stalling of growth and instability to make progress demonstrates just how detrimental these visitations are for him.* Visitation is identified as a major contributing factor in [minor's] Non-Organic Failure to Thrive and persistent PTSD Symptomology. *In order to recover physically, developmentally and psychologically, it is imperative that visitations with [mother] be stopped immediately.*" (Italics added.)

At the hearing on suspension of visitation, minor's counsel agreed with the recommendation in the packet. Counsel noted, "[i]t's very clear about [minor's] dysregulation and how it relates to the visits. It's not just weight gain. It's after visits he doesn't sleep, he cries chronically day and night. He refuses to eat and do much of anything. And that's directly related to [mother]'s visits because when [mother]'s visits don't happen, that stops and gets better. [¶] So the problem is we now have from October to December, his regulation is doing a lot better. He was much more stable. He's increasing in regulation. And when visits with [mother] happen, he goes right back to the beginning, and they have characterized that as PTSD. He does have a very hard time. [¶] The [child] was admitted to the hospital for lack of weight gain and he is now in a different foster home that's supposed to be more geared towards his medical needs, basically because of everything that he's dealing with."

Thereafter, counsel for CFS stated: "[A]t this point, based on what I see in the history of the case and the attached letter, I believe there's enough information for the Court *to make a detriment finding that visitation would be detrimental* to both minor's emotional and physical health based on his reaction to the visits. And we'd ask the Court

to follow the recommendation of the therapist and suspend visits at this time.” (Italics added.)

Immediately after, the court stated, “I am going to suspend visits at this time, but give the social worker the authority to attempt to—authority to initiate visits with mother again, if appropriate. But right now they are suspended.”

Hence, although the court did not make a specific finding of detriment, the transcript of the hearing and evidence presented in the approval packet clearly show the court suspended visitation between mother and minor based on detriment to minor.

In fact, mother objected to the packet and wished to testify and have the social worker testify in an effort to show the trial court that a visit in January “went very well” and her counsel wanted to explore with the social worker the connection between the visits and minor’s negative reactions. Hence, mother and her attorney wanted to prove to the court that the visits were not detrimental and there was no need to suspend them.

Moreover, the entire record supports a detriment finding, whether expressed or implied. Here, whether reviewed under a clear and convincing evidence standard or by a preponderance of the evidence, the finding is amply supported by evidence in the record regarding minor’s severe adverse psychological reaction after visiting with mother. As early as January 2015 minor had been diagnosed with chronic, active, ongoing PTSD, and minor exhibited fear and anxiety beyond the usual dysregulation for a child his age, which was especially evidence after visitation with mother. Even then, his doctor recommended that visits be withheld in order for minor’s condition to stabilize. A year later, the situation had not improved. The doctors at the Children’s Center summarized

minor's behavior after the December 29, 2015, visit: "Following that afternoon visit, [minor] returned to his foster home in a dissociative state whereby he was excessively calm, poorly responsive, ignored encouragement to eat, and would only respond to foster father in an excessively clingy manner. He fell asleep early Wednesday night and cried out frequently during his sleep. [Minor] was highly irritable the next day, refused soothing attempts by all caregivers, refused to eat, and slept restlessly through the night. From Friday night through Monday, foster mother reports that [minor] did not sleep, cried chronically day and night, refused to eat or drink any fluids, and was beginning to lose weight."

Similarly, the foster parents reported that minor had been thriving for three months, but after visiting with mother, he refused to eat or sleep and he began to engage in hitting and spitting behaviors. After evaluating minor, his psychology team found that visitation with mother was a direct cause of minor's failure to thrive and PTSD, and concluded that it was "imperative that visitation with [mother] be stopped immediately."

Therefore, based on the evidence presented, the court acted within its discretion in suspending visitation between minor and mother.

B. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN
DENYING MOTHER'S REQUEST TO HOLD AN EVIDENTIARY
HEARING ON THE VISITATION ORDER

Mother contends that the trial court erred in denying mother's request to hold an evidentiary hearing on the visitation order. Mother, however, provides no authority for the proposition that she should have been entitled to an evidentiary hearing. Moreover, in

light of the information before the court, mother's testimony regarding one visit and the testimony of the social worker would not have offset the opinions of minor's psychology team. As mother noted, minor "was determined to suffer severe Non-organic Failure-To-Thrive due to psychological factors. [Citation.] Visits with . . . mother were identified as a major contributing factor. [Minor's] Psychology Team recommended 'that visitations with . . . mother be stopped immediately.'" Clearly, the only relevant testimony at an evidentiary hearing would have been the testimony of minor's psychology team. However, they were not present. The court's alleged error, therefore, in not allowing an evidentiary hearing was harmless.

Nevertheless, in support of her claim that she should have been afforded the opportunity to testify, mother cites to cases discussing section 388 petitions. Mother could have filed a section 388 petition to introduce new evidence to reinstate visits. However, mother did not file a section 388 petition.

The facts in this case are similar to the facts in *In re Heather P.* (1989) 209 Cal.App.3d 886. In that case, the mother sought to introduce evidence that her circumstances had changed at a postpermanency planning review hearing, without filing a section 388 petition. The lower court refused to hear the evidence, indicating under section 366.3, such an issue was not before it. The court determined the only issue for it to decide was whether the case plan should be continued. The court indicated the appropriate procedure to challenge the custody order was to petition the court under section 388 on the grounds of a change of circumstances. The court of appeal affirmed, holding that petitioning the juvenile court under section 388 provided the mother with an

adequate means to present evidence that her circumstances had changed. (*Id.* at pp. 891-892.)

Similarly, in this case, mother's counsel sought to introduce testimony through an evidentiary hearing without filing a section 388 petition, and the juvenile court chose not to hear such evidence. The decision was within the court's discretion and mother remained free to file a section 388 petition if she wanted to present evidence that her circumstances had changed.

Mother further argues that a parent has a right to visit even after reunification services are terminated unless the court find that the visits are detrimental. In this case, however, the evidence clearly supports a detriment finding, as discussed above. The court, therefore, acted within its discretion when it suspended visitation.

DISPOSITION

The judgment is affirmed.

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MILLER
J.

We concur:

RAMIREZ
P. J.

McKINSTER
J.